

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

C3T Construction Company, Inc.

Appellant

RE: BW JVI, LLC

Solicitation No. VA-69D-09-IB-0319

SBA No. VET-157

Decided: August 26, 2009

APPEARANCES

James Hubbell, Vice President, C3T Construction Company, Inc., Milwaukee, Wisconsin, for Appellant.

Christopher R. Clarke, Office of General Counsel, Small Business Administration, Washington, D.C., for the Agency.

DECISION

I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 125 and 134.

II. Issue

Whether the Acting Director for Government Contracting for the U.S. Small Business Administration made a clear error of fact or law in dismissing C3T Construction Company, Inc.'s protest for lack of specificity. *See* 13 C.F.R. §§ 125.27(b), 134.508.

III. Background

A. Protest and Acting Director for Government Contracting Determination

The U.S. Department of Veterans Affairs (VA), Milwaukee, Wisconsin, issued Solicitation No. VA-69D-09-IB-0319 as a total Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside using sealed-bid procedures. Bid-opening occurred on June 25, 2009, at 3:00pm. BW JVI, LLC (BW JVI) is the apparent low bidder.

On July 2, 2009, C3T Construction Company, Inc. (Appellant) protested BW JVI's SDVO SBC eligibility. Appellant enumerated eleven concerns in its protest: (1) BW JVI does not represent itself as a SDVO SBC; (2) BW JVI is not represented on the Central Contractor Registration website; (3) BW JVI does not have online representations and certifications (ORCA); (4) BW JVI is not identified on Vetbiz.gov; (5) Appellant could not obtain information about BW JVI from the local SBA office; (6) BW JVI appears to be a joint venture and there is no indication of the joint venture's size standard classification, who the eligible SDVO SBC is, and the registered agent of the joint venture does not own a SDVO SBC; (7) Appellant cannot determine if BW JVI meets the joint venture requirements in 13 C.F.R. § 125.27(b) or FAR 19.101; (8) no one from BW JVI appears to have attended the pre-bid walk through; (9) BW JVI appears to have a residential address; (10) Appellant is unsure how BW JVI was able to obtain a bid guaranty for the solicitation; and (11) BW JVI just received a DUNS number on June 22.

On July 8, 2009, the contracting officer (CO) forwarded Appellant's protest to the Small Business Administration (SBA) Office of Government Contracting.

On July 22, 2009, the Acting Director for the Office of Government Contracting (AD/GC) dismissed Appellant's protest for lack of specificity. The AD/GC stated Appellant's protest lacked specificity because it merely states that Appellant is unable to determine if BW JVI is an SDVO SBC due to a lack of representation by BW JVI. The AD/GC indicated the protest contains no factual allegations bearing on BW JVI's SDVO SBC status. The AD/GC stated Appellant failed to articulate any underlying factual basis for the protest, as required by 13 C.F.R. § 125.25(b).

B. Appeal Petition

On August 4, 2009, Appellant filed the instant appeal of the AD/GC's dismissal with the SBA Office of Hearings and Appeals (OHA). Appellant elaborates on the lists of reasons for its original protest of BW JVI and provides additional details. Appellant argues the information demonstrates that BW JVI is not an eligible SDVO SBC in compliance with 13 C.F.R. § 125.15 and IL 049-06-04 and that Bruce Witt of BW Contracting Services, Inc., does not have controlling interest in the joint venture as required by 13 C.F.R. § 125.15(b)(2)(ii).

C. SBA Response

On August 19, 2009, SBA filed its response to the appeal. SBA contends the AD/GC's dismissal was not based on a clear error of fact or law and should be upheld. SBA asserts that Appellant's protest provided no specific information that BW JVI does not meet the SDVO SBC eligibility requirements. SBA argues the regulations require a protest to allege specific facts that an SDVO SBC does not meet the eligibility requirements, but Appellant "only stated it was unable to find any facts to support a protest." SBA Response, at 5. SBA also asserts that the new facts and documents submitted with Appellant's appeal were not before the AD/GC at the time he made his decision and are inadmissible under 13 C.F.R. § 134.512.

IV. Discussion

A. Timeliness and Standard of Review

Appellant filed its appeal petition within 10 business days of receiving the AD/GC's determination, and thus the appeal is timely. 13 C.F.R. § 134.503.

The standard of review for SDVO SBC appeals is whether the AD/GC's determination was based on clear error of fact or law. 13 C.F.R. § 134.508. In determining whether there is a clear error of fact or law, OHA does not evaluate whether a concern met the eligibility requirements of 13 C.F.R. §§ 125.9 and 125.10 *de novo*. Rather, OHA reviews the record to determine whether the AD/GC based his decision upon a clear error of fact or law. 13 C.F.R. § 134.508; *see Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2006) (discussing the clear error standard in the context of a size appeal). Consequently, I will disturb the AD/GC's determination only if I have a definite and firm conviction the AD/GC erred in making a key finding of law or fact.

B. Protest Specificity

An SDVO SBC protest must be specific and a "protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient." 13 C.F.R. § 125.25(b). In addition, the AD/GC may only consider a protest that "presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, DoD, or the U.S. National Archives and Records Administration to show that they meet the definition of service disabled veteran..." and/or "presents credible evidence that the concern is not 51% owned and controlled by one or more service-disabled veterans." 13 C.F.R. § 125.26.

Appellant's protest fails to comply with 13 C.F.R. § 125.26. Appellant lists eleven concerns regarding BW JVI in Appellant's protest; however, only two of Appellant's concerns involve BW JVI's SDVO SBC eligibility. Appellant simply asserts it is unable to determine if BW JVI is an SDVO SBC "due to a lack of representation by the firm" and that Appellant is unaware of who the eligible SDVO SBC is in the joint venture. Appellant's unsupported and vague assertions are not sufficiently specific to sustain a protest. 13 C.F.R. § 125.25(b).

Based upon the foregoing and 13 C.F.R. § 125.27(b), the AD/GC's decision to dismiss Appellant's protest for lack of specificity was not based on a clear error of fact or law.

V. Conclusion

After reviewing the record, I hold the written protest file supports the AD/GC's dismissal of Appellant's protest. Appellant has failed to establish any clear error of fact or law in the AD/GC's decision. Accordingly, I must DENY the instant Appeal and AFFIRM the AD/GC's dismissal of Appellant's protest.

The AD/GC's determination is AFFIRMED and the Appeal is DENIED.

This is the final decision of the Small Business Administration. *See* 13 C.F.R.
§ 134.515(a).

THOMAS B. PENDER
Administrative Judge